

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Et.C., D.C., and Er.C.,)	
Petitioners)	
And)	CAUSE NO. 051228-44
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Et.C., D.C., and Er.C. (hereafter, Petitioners) presently attend Knox Community High School (Knox), a public high school located in the Knox Community School Corporation. Petitioners previously attended North Judson-San Pierre High School (North Judson) in the North Judson-San Pierre School Corporation. During October of 2005, Petitioners enrolled in Knox High School.

On November 8, 2005, Petitioners, through Knox, requested athletic eligibility according to Rule **C-19-5.1**.¹ The Respondent, by its Commissioner, on November 14, 2005, found Petitioners were athletically ineligible at Knox for 365 days from the date of their enrollment at Knox High School pursuant to the Respondent's Rule **C-19-4**. Rule **C-19-4** addresses transfers for primarily athletic reasons, and provides, in part, as follows:

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school . . .

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule C-19-5.1** is "common" to both genders. (All references are to the 2005-2006 by-laws of Respondent.)

Petitioners, through Knox, requested a review of the Commissioner's decision by Respondent's Review Committee. The Respondent's Review Committee conducted its review on December 12, 2005. The Review Committee determined that it cannot say that the move is genuine or with permanent intent, and therefore, cannot conclude that there was a *bona fide*² move. The Review Committee determined that the transfer from North Judson to Knox was primarily for athletic reasons in violation of Rule **C-19-4**.³ The Review Committee issued its decision on December 20, 2005, upholding the Commissioner's decision declaring Petitioners ineligible at Knox until 365 days from the date of their enrollment at Knox, provided they meet all other applicable IHSA eligibility rules.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel⁴ on December 28, 2005. The parties were notified that date of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. On January 10, 2006, Legal Counsel for Petitioners notified the CRP that the parent wished for the proceedings in this matter to be closed to the public. Hearing was set for January 25, 2006, at the Virgil Grissom Conference Room, Indiana Department of Education, 151 West Ohio Street, Indianapolis, Indiana. The parties received timely notice of the proceedings.

²Respondent's by-laws provide the following definition: **Bona fide change of residence** - Determination of what constitutes a 'bona fide' change of residence depends upon the facts in each case, however, to be considered, the following facts **must** exist:

- a. the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by **any** member of the student's immediate family; and
- b. the student's entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.
- c. the change of residence must be genuine, without fraud or deceit, and with permanent intent.

³Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

⁴The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSA but is student-specific. In like manner, no by-law of the IHSA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

On January 25, 2006, the CRP convened.⁵ The Petitioners appeared and were represented by counsel. The Respondent appeared by counsel. Prior to the hearing a brief pre-hearing conference was conducted during which the Petitioners submitted six exhibits. These exhibits were marked P-1, P-2, P-3, P-4, P-5, and P-6. Respondent had no objections to the exhibits, provided that they were sponsored by a witness. Petitioners' exhibits were admitted into the record.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner (Er.C.) is a 15-year-old freshman (d/o/b December 28, 1990) who was enrolled at North Judson in the fall of 2005. Petitioner (D.C.) is a 16-year-old sophomore (d/o/b March 29, 1989) who was enrolled at North Judson in the fall of 2005. Petitioner (Et.C.) is a 18-year-old junior (d/o/b January 9, 1988) who was enrolled at North Judson in the fall of 2005.
2. On Monday, October 24, 2005, Er.C., and her younger sister withdrew from North Judson, and were enrolled at Knox on October 25, 2005. On Monday, October 31, 2005, Petitioners D.C., and Et.C. withdrew from North Judson, and enrolled at Knox and began attendance at Knox Community High School on October 31, 2005.
3. On November 8, 2005, three *IHSAA Athletic Transfer Reports* (hereafter, Reports) were completed for Petitioners. The Reports indicated that the reasons for transfer were student transfers with a corresponding change of residence to new districts or territory by student's custodial parent(s)/guardians(s). The parents answered "yes" to the question "Is the change of residence bona fide?" The parents answered "no" to the question "Is there evidence that the transfer is for athletic reasons?" The parents answered "no" to the question "Is there any evidence that the transfer is a result of undue influence?" The parents indicated that the reasons for change were as follows: 1) To decrease driving time/mileage to work by 50%. 2) To relocate to the community for which I serve as head Pastor of the Knox Freewill Baptist Church. Hardship under Rule **C-17-8** and Rule **C-17-8.1** was not sought.
4. North Judson, the sending school, completed its portion of the Report for Petitioners, and indicated that there should be an investigation if transfer is for athletic reasons. North Judson recommended ineligibility under Rule **C-19-4** and did not sign the Hardship Verification. Mr. M. Kelly Shepherd, Principal, North Judson high school, signed the form for the sending school.
5. Knox, the receiving school, completed its portion of the Report for Petitioners, and indicated that a change of residence was the reason for transfer and recommended eligibility according to Rule **C-19-5.1**. Knox further indicated that this was a bona fide

⁵Eight members were present: Joan L. Keller, Chair; Scott F. Eales; Denise Gilliland; James Perkins, Jr.; Brenda K. Sebastian; Earl H. Smith, Jr.; Terry Thompson; and Brad Tucker.

change of residence. The Principal of Knox Community High School also sent a letter to the IHSAA, dated November 8, 2005, which requested the declaration of immediate athletic eligibility for the three students under Rule **C-19-5**. The letter from Knox further indicated that: the Petitioners' entire family has relocated to a house within the boundaries of the Knox Community School district, and that proof of the rental agreement has been provided upon request to Knox, including a copy of a money receipt for the first months rent; the previous family residence in North Judson has been listed with a realtor and is for sale; and the change of residency was based upon the fact that it allows Petitioners' father to move closer to his place of employment and provide him an opportunity to live in the community in which he serves as the Head Pastor for the Baptist Church.

6. In an undated letter, the IHSAA Commissioner, Blake Ress, ruled that Petitioners' transfer was a transfer for primarily athletic reasons. Included in the definition of a "Transfer for primarily athletic reasons" is a statement that includes "a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics. The Reports indicate that on November 14, 2005, the IHSAA Commissioner ruled that Petitioners' were ineligible for 365 days from the date of their enrollment at Knox High School under the IHSAA's Rule **C-19-4**.
7. Petitioners are all outstanding athletes. Er.C., as a freshman (2005-2006 school year), played on the JV volleyball team and was on the sectional roster. D.C., played basketball on the varsity team as a freshman at North Judson, and as a sophomore (2005-2006 school year), was on the varsity tennis team at North Judson. Et.C., as a freshman and sophomore was on the varsity football, basketball and track teams, and as a junior (2005-2006 school year) was on the varsity football team at North Judson.
8. Petitioners' father had coached the North Judson 6th grade basketball team when his sons were in junior high school.
9. The parents got upset when Er.C., who was a JV volleyball player, was not going to dress for the October 22, 2005 volleyball sectional game. The parents drove to the Rochester sectional site where the father of Er.C. confronted the volleyball coach, and thereafter took their daughter home.
10. After the volleyball incident at the Rochester volleyball sectional, a letter, dated October 25, 2005, was sent to the parents from M. Kelly Shepherd, Principal of North Judson high school. This letter set forth the following guidelines for attendance at North Judson high school functions by Petitioners' parents: 1) no further contact with North Judson coaches by phone, letter or in person, without setting up a meeting through the Principal's office; 2) continued attendance at any school function should be as a positive fan or supporter with no negative comments directed towards students or school personnel; and 3) the guidelines are in effect for any school function, home or away.
11. Petitioners' mother and the Principal of North Judson high school are related and there has been a family dispute within this family which has been ongoing for many years. Petitioners' mother indicated that she had been harassed by the Principal of North Judson high school in March 2003 at a basketball game as "Kelly Shepherd told me when I laid down at night I'd better hope and pray that he never got the head coaching job at North Judson because he just might mistreat the boys." At the hearing, Mr. Shepherd

- acknowledged that he had made this threat to Petitioners' mother. In March 2003, Mr. Shepherd was employed as a teacher by the Knox school district.
12. The parents testified that the decision to move was made on October 20, 2005, and they began moving on October 29, 2005. In November, 2005, the parents listed for sale their former residence in the North Judson school district. An optional 3 acres was also listed for sale in the Listing Agreement, dated November 3, 2005. A copy of a one year lease agreement for this home in Winamac, Indiana showed that the lease agreement began on the first day of the month of December, 2005 and will end on the first day of the month of December, 2006 and the rent was \$750 a month.
 13. The parents rented a home, for one year, in the Knox school district beginning on November 1, 2005. A copy of a rent receipt, dated October 29, 2005, showed the rent was \$600 a month for this property. A copy of a rent receipt, dated November 1, 2005, showed the rent was \$600 for the December rent.
 14. Petitioners' father works for NIPSCO in Plymouth and Petitioners' mother works for Thermo Products in North Judson. Knox is located between Plymouth and North Judson, Indiana. Petitioners' father testified that he was closer to work and closer to his church because of the move. Petitioners' father testified that their financial situation has improved as a result of the move.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Petitioners transferred schools with a corresponding change of residence. A student who transfers with a corresponding change of residence to a new district by the student's custodial parent may be declared immediately eligible provided there is a *bona fide*

change of residence. **Rule C-19-5.** Petitioners move was a *bona fide change of residence*. Petitioners meet the criteria of **Rule C-19-5.**

ORDER

1. Respondent's determination that Petitioners shall be ineligible is nullified. Petitioners shall have full eligibility. This was determined by a vote of 6-2 on the second submission of the question.

DATE: February 7, 2006

/s/ Joan L. Keller, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.